

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Les J. Gurwitt, M.D.

**Physician's and Surgeon's
Certificate No. G 14998**

Respondent.

Case No. 800-2022-086568

DECISION

The attached Stipulated Surrender of License and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on April 18, 2023.

IT IS SO ORDERED April 11, 2023.

MEDICAL BOARD OF CALIFORNIA


Reji Varghese
Interim Executive Director

1 ROB BONTA
Attorney General of California
2 ALEXANDRA M. ALVAREZ
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9
10 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 800-2022-086568

14 **LES J. GURWITT, M.D.**
15 **344 Abington Road**
Encinitas, CA 92024

**STIPULATED SURRENDER OF
LICENSE AND DISCIPLINARY ORDER**

16 **Physician's and Surgeon's Certificate**
17 **No. G 14998,**

18 Respondent.

19
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
21 entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. Reji Varghese (Complainant) is the Interim Executive Director of the Medical Board
24 of California (Board). He brought this action solely in his official capacity and is represented in
25 this matter by Rob Bonta, Attorney General of the State of California, by Karolyn M. Westfall,
26 Deputy Attorney General.

27 2. Les J. Gurwitt, M.D. (Respondent) is representing himself in this proceeding and has
28 chosen not to exercise his right to be represented by counsel.

3. On or about July 18, 1968, the Board issued Physician's and Surgeon's Certificate No. G 14998 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2022-086568 and will expire on September 30, 2024, unless renewed.

JURISDICTION

4. Accusation No. 800-2022-086568 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on March 27, 2023. Respondent timely filed his Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. 800-2022-086568 is attached hereto as Exhibit A and is incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 800-2022-086568. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 800-2022-086568, agrees that cause exists for discipline and hereby surrenders his Physician's and Surgeon's Certificate No. G 14998 for the Board's formal acceptance.

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1 9. Respondent understands that by signing this stipulation he enables the Interim
2 Executive Director of the Board to issue an order, on behalf of the Board, accepting the surrender
3 of his Physician's and Surgeon's Certificate No. G 14998 without further process.

4 **CONTINGENCY**

5 10. Business and Professions Code section 2224, subdivision (b), provides, in pertinent
6 part, that the Medical Board "shall delegate to its executive director the authority to adopt a ...
7 stipulation for surrender of a license."

8 11. This Stipulated Surrender of License and Disciplinary Order shall be subject to the
9 approval of the Interim Executive Director on behalf of the Board. The parties agree that this
10 Stipulated Surrender of License and Disciplinary Order shall be submitted to the Interim
11 Executive Director for his consideration in the above-entitled matter and, further, that the Interim
12 Executive Director shall have a reasonable period of time in which to consider and act on this
13 Stipulated Surrender of License and Disciplinary Order after receiving it. By signing this
14 stipulation, Respondent fully understands and agrees that he may not withdraw his agreement or
15 seek to rescind this stipulation prior to the time the Interim Executive Director, on behalf of the
16 Board, considers and acts upon it.

17 12. The parties agree that this Stipulated Surrender of License and Disciplinary Order
18 shall be null and void and not binding upon the parties unless approved and adopted by the
19 Interim Executive Director on behalf of the Board, except for this paragraph, which shall remain
20 in full force and effect. Respondent fully understands and agrees that in deciding whether or not
21 to approve and adopt this Stipulated Surrender of License and Disciplinary Order, the Interim
22 Executive Director and/or the Board may receive oral and written communications from its staff
23 and/or the Attorney General's Office. Communications pursuant to this paragraph shall not
24 disqualify the Interim Executive Director, the Board, any member thereof, and/or any other
25 person from future participation in this or any other matter affecting or involving Respondent. In
26 the event that the Interim Executive Director on behalf of the Board does not, in his discretion,
27 approve and adopt this Stipulated Surrender of License and Disciplinary Order, with the
28 exception of this paragraph, it shall not become effective, shall be of no evidentiary value

1 whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party
2 hereto. Respondent further agrees that should this Stipulated Surrender of License and
3 Disciplinary Order be rejected for any reason by the Interim Executive Director on behalf of the
4 Board, Respondent will assert no claim that the Interim Executive Director, the Board, or any
5 member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this
6 Stipulated Surrender of License and Disciplinary Order or of any matter or matters related hereto.

7 **ADDITIONAL PROVISIONS**

8 13. This Stipulated Surrender of License and Disciplinary Order is intended by the parties
9 herein to be an integrated writing representing the complete, final, and exclusive embodiment of
10 the agreements of the parties in the above-entitled matter.

11 14. The parties agree that copies of this Stipulated Surrender of License and Disciplinary
12 Order, including copies of the signatures of the parties, may be used in lieu of original documents
13 and signatures and, further, that such copies shall have the same force and effect as originals.

14 15. In consideration of the foregoing admissions and stipulations, the parties agree the
15 Interim Executive Director of the Board may, without further notice to or opportunity to be heard
16 by Respondent, issue and enter the following Disciplinary Order on behalf of the Board:

17 **DISCIPLINARY ORDER**

18 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 14998, issued
19 to Respondent Les J. Gurwitt, M.D., is surrendered and accepted by the Board.

20 1. The surrender of Respondent's Physician's and Surgeon's Certificate and the
21 acceptance of the surrendered license by the Board shall constitute the imposition of discipline
22 against Respondent. This stipulation constitutes a record of the discipline and shall become a part
23 of Respondent's license history with the Board.

24 2. Respondent shall lose all rights and privileges as a physician and surgeon in
25 California as of the effective date of the Board's Decision and Order.

26 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was
27 issued, his wall certificate on or before the effective date of the Decision and Order.

28 ///

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked or surrendered license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 800-2022-086568 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

5. Respondent shall pay the agency its costs of investigation and enforcement in the amount of \$18,436.25 (eighteen thousand, four hundred thirty-six dollars and twenty-five cents) prior to issuance of a new or reinstated license.

6. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation No. 800-2022-086568 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Disciplinary Order. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Surrender of License and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED:

3/31/2023

Re. J. Garret MD

LES J. GURWITT, M.D.

Respondent

iii.

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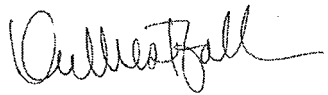
ENDORSEMENT

The foregoing Stipulated Surrender of License and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California of the Department of Consumer Affairs.

DATED: 4/6/23 _____

Respectfully submitted,

ROB BONTA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General


KAROLYN M. WESTFALL
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2022-086568

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10 **BEFORE THE**
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14 **LES J. GURWITT, M.D.**
15 **344 Abington Road**
Encinitas, CA 92024

A C C U S A T I O N

16 **Physician's and Surgeon's Certificate**
17 **No. G 14998,**

Respondent.

18
19
20 **PARTIES**

21 1. Reji Varghese (Complainant) brings this Accusation solely in his official capacity as
22 the Interim Executive Director of the Medical Board of California, Department of Consumer
23 Affairs (Board).

24 2. On or about July 18, 1968, the Medical Board issued Physician's and Surgeon's
25 Certificate No. G 14998 to Les J. Gurwitt, M.D. (Respondent). The Physician's and Surgeon's
26 Certificate was in full force and effect at all times relevant to the charges brought herein and will
27 expire on September 30, 2024, unless renewed.

28 ///

1 (4) Be publicly reprimanded by the board. The public reprimand may include a
2 requirement that the licensee complete relevant educational courses approved by the
board.

3 (5) Have any other action taken in relation to discipline as part of an order of
4 probation, as the board or an administrative law judge may deem proper.

5 ...

6 7. Section 2234 of the Code, states:

7 The board shall take action against any licensee who is charged with
8 unprofessional conduct. In addition to other provisions of this article, unprofessional
conduct includes, but is not limited to, the following:

9 (a) Violating or attempting to violate, directly or indirectly, assisting in or
10 abetting the violation of, or conspiring to violate any provision of this chapter.

11 ...

12 (e) The commission of any act involving dishonesty or corruption that is
13 substantially related to the qualifications, functions, or duties of a physician and
surgeon.

14 ...

15 8. Section 2238 of the Code states:

16 A violation of any federal statute or federal regulation or any of the statutes or
17 regulations of this state regulating dangerous drugs or controlled substances
constitutes unprofessional conduct.

18 9. Section 2239 of the Code states, in pertinent part:

19 (a) The use or prescribing for or administering to himself or herself, of any
20 controlled substance; or the use of any of the dangerous drugs specified in Section
21 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous
or injurious to the licensee, or to any other person or to the public, or to the extent that
22 such use impairs the ability of the licensee to practice medicine safely or more than
one misdemeanor or any felony involving the use, consumption, or
23 self-administration of any of the substances referred to in this section, or any
combination thereof, constitutes unprofessional conduct. The record of the
conviction is conclusive evidence of such unprofessional conduct.

24 ...

25 10. Section 2242 of the Code states, in pertinent part:

26 (a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section
27 4022 without an appropriate prior examination and a medical indication, constitutes
unprofessional conduct...

28 ///

11. Section 2261 of the Code states:

Knowingly making or signing any certificate or other document directly or indirectly related to the practice of medicine or podiatry which falsely represents the existence or nonexistence of a state of facts, constitutes unprofessional conduct.

12. Section 2262 of the Code states, in pertinent part:

Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record, with fraudulent intent, constitutes unprofessional conduct.

...

13. Section 2266 of the Code states: The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.

14. Section 11170 of the Health and Safety Code states: No person shall prescribe, administer, or furnish a controlled substance for himself.

15. Section 11173 of the Health and Safety Code states, in pertinent part:

(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

(b) No person shall make a false statement in any prescription, order, report, or record, required by this division.

...

COST RECOVERY

16. Business and Professions Code section 125.3 states that:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board upon request of the entity bringing the proceeding, the administrative law judge may direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

(b) In the case of a disciplined licentiate that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not

1 limited to; charges imposed by the Attorney General.

2 (d) The administrative law judge shall make a proposed finding of the amount
3 of reasonable costs of investigation and prosecution of the case when requested
4 pursuant to subdivision (a). The finding of the administrative law judge with regard
5 to costs shall not be reviewable by the board to increase the cost award. The board
6 may reduce or eliminate the cost award, or remand to the administrative law judge if
7 the proposed decision fails to make a finding on costs requested pursuant to
8 subdivision (a).

9 (e) If an order for recovery of costs is made and timely payment is not made as
10 directed in the board's decision, the board may enforce the order for repayment in any
11 appropriate court. This right of enforcement shall be in addition to any other rights
12 the board may have as to any licensee to pay costs.

13 (f) In any action for recovery of costs, proof of the board's decision shall be
14 conclusive proof of the validity of the order of payment and the terms for payment.

15 (g)(1) Except as provided in paragraph (2), the board shall not renew or
16 reinstate the license of any licensee who has failed to pay all of the costs ordered
17 under this section.

18 (2) Notwithstanding paragraph (1), the board may, in its discretion,
19 conditionally renew or reinstate for a maximum of one year the license of any
20 licensee who demonstrates financial hardship and who enters into a formal agreement
21 with the board to reimburse the board within that one-year period for the unpaid
22 costs.

23 (h) All costs recovered under this section shall be considered a reimbursement
24 for costs incurred and shall be deposited in the fund of the board recovering the costs
25 to be available upon appropriation by the Legislature.

26 (i) Nothing in this section shall preclude a board from including the recovery of
27 the costs of investigation and enforcement of a case in any stipulated settlement.

28 (j) This section does not apply to any board if a specific statutory provision in
that board's licensing act provides for recovery of costs in an administrative
disciplinary proceeding.

FIRST CAUSE FOR DISCIPLINE

(Prescribing or Administering Controlled Substances to Himself)

23 17. Respondent has subjected his Physician's and Surgeon's Certificate No. G 14998 to
24 disciplinary action under sections 2227, and 2234, as defined by section 2239, subdivision (a), of
25 the Code, in that he has administered controlled substances to himself, as more particularly
26 alleged hereinafter:

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28 ///

1 18. Between in or around 2015 and 2022, Respondent regularly prescribed alprazolam,¹
2 Fiorinol,² and diazepam³ to Respondent's relative, Patient A.⁴

3 19. On or about January 25, 2020, Respondent presented to A.B., M.D., for medical
4 treatment. On that date, Respondent informed Dr. A.B. that he had experienced bouts of
5 depression and anxiety off and on through the years. Further, that he had taken 2-4 tablets of
6 Fiorinol daily for the last 15 years for his headache and his mood. Respondent indicated he was
7 no longer taking Fiorinal at that time. Respondent also admitted taking alprazolam and/or
8 diazepam for anxiety. Dr. A.B. diagnosed Respondent with a major depressive disorder.

9 20. On or about February 28, 2022, during a clinical visit with Patient A, T.L., P.A.,
10 checked Patient A's CURES report and noted the large number of prescriptions for alprazolam
11 and Fiorinal prescribed to Patient A by Respondent. When asked about the prescriptions, Patient
12 A informed T.L., P.A., that Respondent is her relative and she believed that he had written those
13 prescriptions for himself.

14 21. On or about March 1, 2022, T.L., P.A., spoke with Respondent by phone. During that
15 discussion, Respondent admitted prescribing medications to Patient A for himself.

16 22. On or about August 25, 2022, a Board investigator spoke with Respondent at his
17 home. During that discussion, Respondent claimed to have suffered from headaches and loss of
18 sleep in 2021, so he obtained permission from Patient A to prescribe butalbital, alprazolam, and
19 diazepam for his own use. He claimed he was not addicted and that he had stopped prescribing
20 those medications to himself sometime in February or March, 2022, after he spoke with Patient
21 A's doctor.

22
23 ¹ Alprazolam (brand name Xanax) is a Schedule IV controlled substance pursuant to
Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to section
4022 of the Code.

24 ² Fiorinal (brand name for butalbital) is a Schedule III controlled substance pursuant to
25 Health and Safety Code section 11056, subdivision (c), and a dangerous drug pursuant to section
4022 of the Code.

26 ³ Diazepam (brand name Valium) is a Schedule IV controlled substance pursuant to
27 Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to section
4022 of the Code.

28 ⁴ To protect the privacy of the patient involved, the patient's name has not been included
in this pleading. Respondent is aware of the identity of the patient referred to herein.

1 23. On or about August 25, 2022, Respondent voluntarily provided a urine sample to the
2 Board's investigator. The urine sample was subsequently tested and revealed a positive result for
3 butalbital and alprazolam.

4 24. On or about September 29, 2022, Respondent voluntarily submitted to a psychiatric
5 evaluation by Board-appointed psychiatrist, N.B., M.D. During his psychiatric interview,
6 Respondent informed Dr. N.B. that he is a retired OBGYN and has not practiced since 2020. He
7 admitted he started prescribing Fioricet and Xanax to himself in Patient A's name approximately
8 five years earlier. Respondent claimed to have weaned himself off these medications for three
9 months. When confronted about his positive urine screen in August, Respondent claimed he was
10 still taking a little bit at that time because he was still weaning himself off the medications.
11 Respondent further stated, "I am not using anymore. I was able to stop on my own over a few
12 months. I am proud of that. I am in remission now."

13 25. After his review of records and mental status examination that included psychometric
14 testing, Dr. N.B. concluded that Respondent suffers from a sedative use disorder and an
15 unspecified cognitive disorder. Dr. N.B. further concluded that Respondent has not received
16 formal treatment for his sedative use disorder and has had no documented period of sobriety. Dr.
17 N.B. determined that Respondent is unable to practice medicine safely at this time as a result of
18 his sedative use disorder, and that his continued practice of medicine without formal treatment
19 and documented sobriety will endanger the public health, safety, and welfare.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Prescribing, Dispensing, or Furnishing Dangerous Drugs without Prior**
22 **Examination and Medical Indication)**

23 26. Respondent has further subjected his Physician's and Surgeon's Certificate No.
24 G 14998 to disciplinary action under sections 2227, and 2234, as defined by section 2242,
25 subdivision (a), of the Code, in that he has prescribed, dispensed, or furnished dangerous drugs as
26 defined in Section 4022 without an appropriate prior examination and a medical indication, as
27 more particularly alleged in paragraphs 17 through 25 above, which are hereby incorporated by
28 reference and realleged as if fully set forth herein.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Violation of State Laws Regulating Dangerous Drugs and/or Controlled Substances)**

3 27. Respondent has further subjected his Physician's and Surgeon's Certificate No.
4 G 14998 to disciplinary action under sections 2227 and 2234, as defined by section 2238, of the
5 Code, in that he has violated a state law or laws regulating dangerous drugs and/or controlled
6 substances, as more particularly alleged in paragraphs 17 through 25 above, which are hereby
7 incorporated by reference and realleged as if fully set forth herein.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 **(Dishonesty or Corruption)**

10 28. Respondent has further subjected his Physician's and Surgeon's Certificate No.
11 G 14998 to disciplinary action under sections 2227 and 2234, as defined by section 2234,
12 subdivision (e), of the Code, in that he has committed an act or acts of dishonesty or corruption,
13 as more particularly alleged in paragraphs 17 through 25, above, which are hereby incorporated
14 by reference and realleged as if fully set forth herein.

15 **FIFTH CAUSE FOR DISCIPLINE**

16 **(False Representations)**

17 29. Respondent has further subjected his Physician's and Surgeon's Certificate No.
18 G 14998 to disciplinary action under sections 2227 and 2234, as defined by section 2261, of the
19 Code, in that he has knowingly made or signed a certificate or document directly or indirectly
20 related to the practice of medicine which falsely represented the existence or nonexistence of a
21 state of facts, as more particularly alleged in paragraphs 17 through 25, above, which are hereby
22 incorporated by reference and realleged as if fully set forth herein.

23 **SIXTH CAUSE FOR DISCIPLINE**

24 **(Creation of False Medical Records, with Fraudulent Intent)**

25 30. Respondent has further subjected his Physician's and Surgeon's Certificate No.
26 G 14998 disciplinary action under sections 2227 and 2234, as defined by section 2262, of the
27 Code, in that he created false medical records with fraudulent intent, as more particularly alleged
28 ///

1 in paragraphs 17 through 25, above, which are hereby incorporated by reference and realleged as
2 if fully set forth herein.

3 **SECTION 822 CAUSE FOR ACTION**

4 **(Mental Illness and/or Physical Illness Affecting Competency)**

5 31. Respondent is subject to action under section 822 of the Code in that his ability to
6 practice medicine safely is impaired due to a mental illness and/or physical illness affecting
7 competency, as more particularly alleged in paragraphs 17 through 25, above, which are hereby
8 incorporated by reference and realleged as if fully set forth herein.

9 **PRAYER**

10 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
11 and that following the hearing, the Medical Board of California issue a decision:

12 1. Revoking or suspending Physician's and Surgeon's Certificate No. G 14998, issued
13 to Respondent, Les J. Gurwitt, M.D.;

14 2. Revoking, suspending or denying approval of Respondent, Les J. Gurwitt, M.D.'s
15 authority to supervise physician assistants and advanced practice nurses;

16 3. Ordering Respondent Les J. Gurwitt, M.D., to pay the Board the costs of the
17 investigation and enforcement of this case, and if placed on probation, the costs of probation
18 monitoring; and

19 4. Taking such other and further action as deemed necessary and proper.

20
21 DATED: MAR 27 2023

22 JENNA JONES FOR
23 REJI VARGHESE
24 Interim Executive Director
25 Medical Board of California
26 Department of Consumer Affairs
27 State of California
28 Complainant

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